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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

SIERRA CLUB, GREAT BASIN RESOURCE
WATCH, AMIGOS BRAVOS, and IDAHO
CONSERVATION LEAGUE,

Plaintiffs,

vs.

STEPHEN JOHNSON, Administrator, United
States Environmental Protection Agency, and
MARY E. PETERS, Secretary, United States
Department of Transportation,

Defendants.

Case No. C-08-01409-WHA

Hon. William H. Alsup

**INTERVENORS SUPERFUND
SETTLEMENTS PROJECT, RCRA
CORRECTIVE ACTION PROJECT,
AND AMERICAN PETROLEUM
INSTITUTE'S ANSWER TO
PLAINTIFFS' COMPLAINT FOR
DECLARATORY AND INJUNCTIVE
RELIEF**

Intervenors Superfund Settlements Project, RCRA Corrective Action Project, and
American Petroleum Institute (collectively, "Intervenors") by and through their undersigned
counsel, answer the numbered paragraphs of the Complaint for Declaratory and Injunctive Relief
("Complaint") of Plaintiffs Sierra Club, Great Basin Resource Watch, Amigos Bravos, and Idaho
Conservation League (collectively, "Plaintiffs") as follows:

INTRODUCTION

1
2 1. To the extent that Plaintiffs purport to bring a civil action pursuant to the
3 Comprehensive Environmental Response, Compensation and Liability Act (“CERCLA”) and the
4 Administrative Procedure Act (“APA”), no response is required. The remaining allegations in
5 this paragraph constitute legal conclusions to which no response is required, and therefore they
6 are deemed to be denied.

7 2. The first sentence constitutes a legal conclusion to which no response is required,
8 and therefore is deemed to be denied. Intervenor lack knowledge or information sufficient to
9 form a belief as to the truth of the remaining allegations in this paragraph, and therefore such
10 allegations are deemed to be denied.

JURISDICTION

11
12 3. The allegations in this paragraph constitute legal conclusions to which no response
13 is required, and therefore are deemed to be denied.

14 4. Intervenor admit that venue lies in this Court.

15 5. Intervenor lack knowledge or information sufficient to form a belief as to the
16 truth of the allegations in this paragraph, and therefore such allegations are deemed to be denied.

PARTIES

17
18 6. Intervenor lack knowledge or information sufficient to form a belief as to the
19 truth of the allegations in this paragraph, and therefore such allegations are deemed to be denied.

20 7. Intervenor lack knowledge or information sufficient to form a belief as to the
21 truth of the allegations in this paragraph, and therefore such allegations are deemed to be denied.

22 8. Intervenor lack knowledge or information sufficient to form a belief as to the
23 truth of the allegations in this paragraph, and therefore such allegations are deemed to be denied.

24 9. Intervenor lack knowledge or information sufficient to form a belief as to the
25 truth of the allegations in this paragraph, and therefore such allegations are deemed to be denied.

26 10. Plaintiffs’ statement regarding the purpose of CERCLA is a legal conclusion to
27 which no response is required, and therefore is deemed to be denied. Intervenor lack knowledge

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1 or information sufficient to form a belief as to the truth of the remaining allegations in this
2 paragraph, and therefore such allegations are deemed to be denied.

3 11. Intervenors lack knowledge or information sufficient to form a belief as to the
4 truth of the allegations in this paragraph, and therefore such allegations are deemed to be denied.

5 12. Intervenors lack knowledge or information sufficient to form a belief as to the
6 truth of the allegations in this paragraph, and therefore such allegations are deemed to be denied.

7 13. Intervenors lack knowledge or information sufficient to form a belief as to the
8 truth of the allegations in this paragraph, and therefore such allegations are deemed to be denied.

9 14. Intervenors admit that Stephen Johnson is the Administrator of the United States
10 Environmental Protection Agency. The remaining allegations in this paragraph constitute legal
11 conclusions to which no response is required, and therefore they are deemed to be denied.

12 15. Intervenors admit that Mary E. Peters is the Secretary of the Department of
13 Transportation. The remaining allegations in this paragraph constitute legal conclusions to which
14 no response is required, and therefore they are deemed to be denied.

15 **STATUTORY BACKGROUND**

16 16. The allegations in this paragraph constitute legal conclusions to which no response
17 is required, and therefore are deemed to be denied.

18 17. To the extent that Plaintiffs purport to quote the text of 42 U.S.C. § 9608(b)(1),
19 Intervenors maintain that the statute speaks for itself, and thus no response is required. The
20 remaining allegations in this paragraph constitute legal conclusions to which no response is
21 required, and therefore they are deemed to be denied.

22 18. To the extent that Plaintiffs purport to quote the text of 42 U.S.C. § 9608(b)(3),
23 Intervenors maintain that the statute speaks for itself, and thus no response is required.

24 19. Executive Order No. 12,580 speaks for itself, and thus no response is required.

25 20. Executive Order No. 12,580 speaks for itself, and thus no response is required.

26 21. The allegations in this paragraph constitute legal conclusions to which no response
27 is required, and therefore are deemed to be denied. Intervenors maintain that CERCLA
28 § 108(b)(1) speaks for itself.

I. THE LACK OF FINANCIAL ASSURANCE REGULATIONS INCREASES THE RISK OF HARM TO PEOPLE AND THE ENVIRONMENT FROM IMPROPERLY DISPOSED HAZARDOUS SUBSTANCES.

22. Intervenors lack knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph and therefore such allegations are deemed to be denied.

23. Intervenors lack knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph and therefore such allegations are deemed to be denied.

24. Intervenors deny the allegations in this paragraph.

25. Intervenors lack knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph and therefore such allegations are deemed to be denied.

26. Intervenors deny the allegations in the second sentence of this paragraph. Intervenors lack knowledge or information sufficient to form a belief as to the truth of the remaining allegations in this paragraph and therefore such allegations are deemed to be denied.

27. Intervenors admit that the tax on crude oil and certain chemicals and the tax on corporations that provided funding to Superfund expired in 1995. The remaining allegations in this paragraph constitute legal conclusions to which no response is required, and therefore they are deemed to be denied.

28. Intervenors lack knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph and therefore such allegations are deemed to be denied.

29. Intervenors lack knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph and therefore such allegations are deemed to be denied.

30. Intervenors admit that the EPA Office of Inspector General ("OIG") issued a report titled "Congressional Request on Funding Needs for Non-Federal Superfund Sites" on January 7, 2004 ("OIG Report"). To the extent that Plaintiffs purport to quote the text of the OIG Report, Intervenors maintain that the OIG Report speaks for itself, and thus no response is required.

31. To the extent that Plaintiffs purport to quote the text of the OIG Report, Intervenors maintain that the OIG Report speaks for itself, and thus no response is required.

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1 32. To the extent that Plaintiffs purport to quote the text of the OIG Report,
2 Intervenor maintain that the OIG Report speaks for itself, and thus no response is required. The
3 remaining allegations in this paragraph constitute legal conclusions to which no response is
4 required, and therefore they are deemed to be denied.

5 33. The first sentence of this paragraph constitutes a legal conclusion to which no
6 response is required, and is therefore deemed to be denied. Intervenor lack knowledge or
7 information sufficient to form a belief as to the truth of the allegations in the second sentence of
8 this paragraph, and therefore such allegations are deemed to be denied.

9 34. Intervenor lack knowledge or information sufficient to form a belief as to the
10 truth of the allegations in this paragraph and therefore such allegations are deemed to be denied.

11 35. Intervenor lack knowledge or information sufficient to form a belief as to the
12 truth of the allegations in this paragraph and therefore such allegations are deemed to be denied.

13 36. Intervenor deny the allegations in the second sentence of this paragraph. The
14 allegations in the first sentence of this paragraph constitute legal conclusions to which no
15 response is required, and therefore they are deemed to be denied.

16 **CAUSES OF ACTION**

17 **FIRST CLAIM FOR RELIEF**
18 **VIOLATION OF 42 U.S.C. § 9608(B)(1)**

19 37. The allegations in this paragraph constitute legal conclusions to which no response
20 is required, and therefore they are deemed to be denied.

21 38. The allegations in this paragraph constitute legal conclusions to which no response
22 is required, and therefore they are deemed to be denied. To the extent any response is required,
23 Intervenor deny this paragraph.

24 39. The allegations in this paragraph constitute legal conclusions to which no response
25 is required, and therefore they are deemed to be denied. To the extent any response is required,
26 Intervenor deny this paragraph.

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**SECOND CLAIM FOR RELIEF
VIOLATION OF 5 U.S.C. § 706**

40. The allegations in this paragraph constitute legal conclusions to which no response is required, and therefore they are deemed to be denied.

41. The allegations in this paragraph constitute legal conclusions to which no response is required, and therefore they are deemed to be denied.

RELIEF REQUESTED

Intervenors hereby incorporate by reference their responses to paragraphs 1 through 41 above. The Relief Requested constitutes legal conclusions to which no response is required. To the extent any response is required, Intervenors deny that Plaintiffs are entitled to any relief against Defendants Stephen Johnson and Mary E. Peters (collectively, "Defendants").

AFFIRMATIVE DEFENSES

FIRST DEFENSE

Intervenors incorporate their answers to the Complaint in paragraphs 1 through 41 above.

SECOND DEFENSE

The Court lacks jurisdiction over the subject matter of the Complaint.

THIRD DEFENSE

The Complaint fails to state a claim against Defendants upon which relief can be granted.

FOURTH DEFENSE

Plaintiffs' complaint and requested relief are barred by the applicable statutes of limitations, laches, estoppel, waiver or other equitable defenses.

FIFTH DEFENSE

Plaintiffs' claims are barred for lack of standing.

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1 Dated: April 10, 2008

Respectfully submitted,

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3 /s/ Benjamin P. Smith

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